

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>TOMMY LEE WAUGH, #47088-074,</b>	)	
	)	
<b>Plaintiff,</b>	)	
<b>vs.</b>	)	<b>Case No. 21-cv-0813-JPG</b>
	)	
<b>UNITED STATES of AMERICA,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM AND ORDER**

**GILBERT, District Judge:**

This matter is before the Court on the Motion to Voluntarily Dismiss filed by Plaintiff Tommy Lee Waugh. (Doc. 31). Plaintiff requests to voluntarily dismiss his complaint because he “cannot find documents to support an affirmative defense.” (Doc. 31, p. 1). Defendant USA’s Motion for Summary Judgment arguing Plaintiff failed to exhaust his administrative remedies is also pending before the Court (Doc. 24). Plaintiff responded in opposition but provided no documents to support his assertion that he administratively exhausted his claims (Doc. 30).

Plaintiff is an inmate in the custody of the Federal Bureau of Prisons (“BOP”), currently incarcerated at the United States Penitentiary in Terre Haute, Indiana. He filed this case in the Williamson County, Illinois state circuit court on May 3, 2021 while he was confined at the United States Penitentiary in Marion, Illinois (“Marion”).<sup>1</sup> (Doc. 1-1, pp. 2-16).

A plaintiff may voluntarily dismiss an action without a court order by filing a notice of dismissal before the opposing party serves an answer or a motion for summary judgment, or if all parties stipulate to a dismissal. FED. R. CIV. P. 41(a)(1)(A). Plaintiff’s motion was filed too late to

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<sup>1</sup> Plaintiff’s Williamson County case was docketed as No. 21-L-54. Defendants removed the case to this Court on July 15, 2021. (Doc. 1).

meet the first requirement, and no stipulation of dismissal has been submitted. Nonetheless, more than 30 days have elapsed since Plaintiff filed his motion to voluntarily dismiss, and Defendants have not objected or filed any response. *See* SDIL-LR 7.1(c)(1). Accordingly, the Court finds that voluntary dismissal is appropriate, and will grant Plaintiff's motion pursuant to Federal Rule of Civil Procedure 41(a)(2).

**IT IS ORDERED** that Plaintiff's Motion to Voluntarily Dismiss (Doc. 31) is **GRANTED**. All other pending motions are **DENIED AS MOOT**. This case is **DISMISSED WITHOUT PREJUDICE**. FED. R. CIV. P. 41(a)(2).

The Clerk of Court is **DIRECTED** to close this case and enter judgment accordingly. The Clerk is **FURTHER DIRECTED** to mail a certified copy of this Order for informational purposes to the Clerk of the Circuit Court of the First Judicial Circuit, Williamson County, Illinois (Case No. 2021-L-54).

**IT IS SO ORDERED.**

**DATED: 5/9/2023**

*s/J. Phil Gilbert*  
**J. PHIL GILBERT**  
**United States District Judge**